

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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CITY OF NEW YORK,

Plaintiff,

- against -

A-1 JEWELRY & PAWN, INC., BROOKLYN OFFICE

Defendants.
-----X

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.

★ SEP 04 2014 ★

**REPORT AND
RECOMMENDATION**
06 CV 2233 (JBW)

*No objection
having been received by
today, the report and
recommendation of the
magistrate judge
dated July 31,
2014 is
approved and
made an
order of the
court. So
advised
JMW
9/3/14*

On July 25, 2014, the Special Master filed a letter seeking to withdraw his prior motion to hold Larry H. Mickalis in contempt for failing to comply with this Court's June 5, 2014 Order, which directed Mr. Mickalis to answer certain questions posed by the Special Master. By letter dated July 23, 2014, Mr. Mickalis responded to the Special Master's questions. Accordingly, the undersigned respectfully recommends that, in accordance with the July 25, 2014 letter from the Special Master, (1) the Motion for an Order to Show Cause for Civil Contempt, Docket No. 991, (2) the Letter Motion for Contempt, Docket No. 998, and (3) the Letter Motion to Enforce Judgment, Docket No. 1001 all be terminated as moot.

Furthermore, in his July 23, 2014 letter, Mr. Mickalis requests that should the City of New York or Special Master wish to serve him in the future, they do so by personal service. (Ltr. 07/23/14¹ at 2). Specifically, Mr. Mickalis requests that papers be served on him at 1024 North Main Street, Summerville, SC 29483, and he further requests that the process server contact him by phone prior to delivering any papers so that Mr. Mickalis can "make arrangements to promptly meet to receive the papers." (*Id.*) In response, the Special Master contends that Mr.

¹Citations to "Ltr. 07/23/14" refer to the letter from Mr. Mickalis dated July 23, 2014.

Mickalis “has not provided any reasonable justification for why the Special Master’s correspondence cannot be served upon him by ordinary means of paper delivery,” in compliance with the Federal Rules and asserts that “[t]here is no basis to restrict service in this matter to personal service with its attending additional burdens of time and money.” (Ltr. 07/25/14 at 2). Accordingly, the Court respectfully recommends that Mr. Mickalis’ request to be personally served be denied. There is no apparent reason why service through the United Postal Service (“UPS”) is no longer adequate, especially given that the Special Master “successfully provided its reports to [Mr.] Mickalis by way of UPS delivery until packages to Mickalis Pawn Shop, LLC, began to be refused following the Court’s June 5, 2014 Order.” (*Id.*)

Additionally, Mr. Mickalis indicates that he is not selling handguns personally or through any company in which he retains an ownership interest and thus requests that “this matter . . . be permanently dismissed,” since Mr. Mickalis has answered both of the questions posed by the Special Master and has applied to the South Carolina Secretary of State for the termination of the LLC of Mickalis Pawn Shop. (*Id.* at 1-2). To the extent that Mr. Mickalis appears to be asking for complete termination of the Amended Judgment Granting Injunctive Relief of May 3, 2012 (“Amended Injunction”), the Court respectfully recommends that this request be denied. As the Special Master points out in its July 25, 2014 letter, “[t]he Amended Injunction expressly applies not only to Mickalis Pawn Shop, LLC, but also to its ‘officers, agents, servants, [and] employees’ as well as ‘all other persons who are now in active concert or participation with them.’” (Ltr. 07/25/14 at 2). Given that this court has determined that Mr. Mickalis is an agent of Mickalis Pawn Shop, LLC and that organizations may not circumvent court orders by making superficial changes to their name or form, the Court respectfully recommends that Mr. Mickalis’ request to

be dismissed from this suit also be denied.

Any objections to this Report and Recommendation must be filed with the Clerk of the Court, with a copy to the undersigned, within fourteen (14) days of receipt of this Report. Failure to file objections within the specified time waives the right to appeal the District Court's order.

See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), 6(e), 72(b); Small v. Secretary of Health & Human Servs., 892 F.2d 15, 16 (2d Cir. 1989). The Clerk is directed to send copies of this Order to the parties either electronically through the Electronic Case Filing (ECF) system or by mail.

SO ORDERED.

Dated: Brooklyn, New York
July 31, 2014


Cheryl L. Pollak
United States Magistrate Judge
Eastern District of New York